STATE OF MICHIGAN

COURT OF APPEALS

PAULA A. SCOTT,

Plaintiff-Appellant,

v

COUNTRYWIDE HOME LOANS, INC.,

Defendant/Counter-Plaintiff-Appellee,

and

DIY, INC.,

Defendant/Counter-Defendant-Appellee.

UNPUBLISHED
June 20, 2006

No. 267210
Genesee Circuit Court
LC No. 04-078498-CK

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from a circuit court order granting defendants' motions for summary disposition. We affirm in part, reverse in part, and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff owned a home on which Countrywide Home Loans (CHL) held a mortgage. Plaintiff fell behind on the mortgage payments and moved out of the house, leaving personal property and debris behind. Six months later, CHL hired DIY, Inc. to winterize and secure the property. When DIY employees arrived, they found a side door unlocked. After winterizing the house and making note of the contents, they secured the doors and windows and left. Plaintiff returned, gaining access to the house through an unlocked window, and found that some property was missing. CHL later hired DIY to remove hazardous material and exterior debris from the premises. When DIY employees returned, they found that the padlock on the front door of the house had been cut, and a padlock on the garage door had been opened and removed. There were obvious signs that someone had been inside the house and the garage. When the employees completed their work, they resecured the doors and left. Plaintiff returned again and found even more property missing. Plaintiff seeks to hold defendants liable for the missing personalty. The trial court ruled that there was insufficient evidence that defendants took the missing items.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. If the moving party satisfies its burden of identifying undisputed facts that entitle it to judgment, summary disposition is properly granted unless the opposing party presents evidence of the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

The disputed issue is that of causation. Proximate cause consists of two separate elements: (1) cause in fact, which requires a showing that but for the defendant's conduct, the plaintiff would not have been injured and (2) legal or proximate cause, which involves examination of the foreseeability of consequences and whether a defendant should be held legally responsible for those consequences. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994).

The cause in fact element generally requires a showing that "but for" the defendant's actions, the plaintiff's injury would not have occurred. *Id.* at 163. "Generally, an act or omission is a cause in fact of an injury only if the injury could not have occurred without (or "but for") that act or omission. While a plaintiff need not prove that an act or omission was the *sole* catalyst for his injuries, he must introduce evidence permitting the jury to conclude that the act or omission was *a* cause." *Craig v Oakwood Hosp*, 471 Mich 67, 87; 684 NW2d 296 (2004) (emphasis in original, footnotes omitted).

> It is important to bear in mind that a plaintiff cannot satisfy this burden by showing only that the defendant *may* have caused his injuries. Our case law requires more than a mere possibility or a plausible explanation. Rather, a plaintiff establishes that the defendant's conduct was a cause in fact of his injuries only if he "set[s] forth specific facts that would support a reasonable inference of a logical sequence of cause and effect." A valid theory of causation, therefore, must be based on facts in evidence. And while " '[t]he evidence need not negate all other possible causes,' " this Court has consistently required that the evidence " 'exclude other reasonable hypotheses with a fair amount of certainty.' " [*Id.* at 87-88 (emphasis in original, citations omitted).]

In this case, plaintiff discovered items were missing from the house between DIY's first and second visit. But, there is no evidence that DIY's employees took anything during that first visit. Further, it is undisputed that the side door had been left unlocked, thus allowing access to anyone before DIY first entered. Because there is a presumption in the absence of direct evidence to the contrary that a person acts in accordance with the law, see *Bauman v Grand Trunk W R Co*, 376 Mich 675, 689; 138 NW2d 285 (1965), plaintiff argues that it cannot be inferred that a third person would have entered and taken the property given that such action involves illegal conduct. The same presumption, however, operates in favor of defendants as well. Thus, absent evidence that the missing items were in fact in the house on the first day DIY's employees entered the premises and were gone immediately after they left, it cannot be inferred from the employees' mere presence that they took the missing items.

Plaintiff discovered that more items were missing after DIY's second visit. Evidence that DIY employees found that one padlock had been cut and the enclosed porch had been ransacked was sufficient to rebut any presumption of legality and create an inference that third persons had entered illegally. Plaintiff's claim that it could be inferred that a DIY employee had taken her property because he had taken property from other jobs must be rejected because it violates MRE 404(b)(1). Because plaintiff did not, with one exception, present any facts which permit a reasonable inference that DIY employees took the missing property, the trial court did not err in concluding that there was insufficient evidence of causation.

We note that it was undisputed that DIY employees admitted removing one of the missing items at issue, a bicycle carrier. Because there is direct evidence that DIY improperly removed the carrier, plaintiff may proceed with that aspect of her claim. We express no opinion with regard to the viability of plaintiff's various legal theories or whether CHL is vicariously liable for DIY's actions.

We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Patrick M. Meter